IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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| *In re* | ) | Chapter 11 Case No. |
| | ) | |
| ARMSTRONG WORLD INDUSTRIES, INC., *et al.*, | ) | 00-4471 (JKF) |
| | ) | |
| | ) | (Jointly Administered) |
| Debtors. | ) | |
| | ) | Objection Deadline: |
| | ) | April 29, 2005 at 4:00 p.m. |
| | ) | Hearing Date: |
| | ) | May 16, 2005 at 11:30 a.m. |
| | ) | Related Docket 8082 |

**OBJECTION OF LIBERTY MUTUAL INSURANCE COMPANY TO JOINT MOTION FOR ORDER (i) APPROVING SETTLEMENT AGREEMENT BETWEEN ARMSTRONG WORLD INDUSTRIES, INC. AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND (ii) APPROVING THE ASSUMPTION OF THE MALVERN CONSENT DECREE AGREEMENTS**

Liberty Mutual Insurance Company ("Liberty Mutual"), by its undersigned counsel, respectfully submits the following Objection to the Joint Motion For Order (i) Approving Settlement Agreement Between Armstrong World Industries, Inc. And The United States Environmental Protection Agency And (ii) Approving The Assumption Of The Malvern Consent Decree Agreements ("Joint Motion").

1. The proposed Settlement Agreement between Armstrong World Industries, Inc. ("Armstrong") and The United States Environmental Protection Agency ("EPA") involves certain liabilities (including for the Peterson/Puritan Site discussed infra), for which Armstrong seeks indemnity under policies issued by Liberty Mutual.

2. The Settlement seeks to allocate nearly 90% of the total settlement consideration to one (among at least 38) of the Sites involved, the Peterson/Puritan Site.





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(Settlement Agreement ¶ 4.N.) As we show, there is no basis for the Settlement Agreement's proposed overall allowed claim amount of $8,727,738.80 or for the $7,780,000 allocated to the Peterson/Puritan Site. Moreover, the Settlement is purposely structured to enable Armstrong and/or EPA to assert against Liberty Mutual, in the coverage context, that the Court's approval of Settlement Agreement constitutes claim (res judicata) or issue (collateral estoppel) preclusion as to reasonableness of the overall settlement and as to allocation of $7,780,000 of the $8,727,738.80 agreed allowed claim amount to the Peterson/Puritan Site.

## THE SETTLEMENT AGREEMENT

3. The Joint Motion asserts that the Settlement Agreement is a "global resolution of its [Armstrong's] environmental liabilities to the United States." (Joint Motion ¶¶ 7, 18.) It resolves liability relating to 18 "Discharged Sites" (Settlement Agreement ¶ 1.J), to which no claim payment is allocated (Settlement Agreement ¶ 11); and as to 19 additional "Liquidated Sites" (Settlement Agreement ¶ 1.P), to almost all of which claim amounts are allocated (Settlement Agreement ¶ 4). In addition, the Settlement Agreement sets up a framework for liability resolution as to "Additional Sites" (Settlement Agreement ¶ 8-10), and resolves liability relating to the Malvern Site through assumption of certain contracts (Settlement Agreement ¶ 6).

4. The crux of this objection is not only the lack of basis for the agreed overall claim amount ($8,727,738.80), but also the amount allocated to one of the many sites, the Peterson/Puritan Site in Lincoln/Cumberland, Rhode Island. The stipulated Peterson/Puritan Site amount is $7,780,000 (Settlement Agreement ¶ 4N). As shown in the Declaration of Nancy L. Reid ("Reid Declaration") attached as Exhibit A hereto,

there is no reasoned basis for the overall $8,727,738.80 stipulated claim amount or for allowing a $7,780,000 claim as to the Peterson/Puritan Site. These numbers are the product of speculation and guesswork. (Reid Decl. ¶ 3.)

5. The EPA filed a single proof of claim, No. 4724 (Joint Motion ¶ 4); the Settlement Agreement resolves liability as to at least 38 sites under this proof of claim. However, under the Agreement the EPA will obtain a separate allowed unsecured claim for $7.78 million as to the Peterson/Puritan Site, as opposed to a single aggregate allowed claim for all resolved sites. (Settlement Agreement ¶ 4 at p. 7.)

## ROLE OF INSURANCE IN THE SETTLEMENT

6. Insurance is highly germane to the Settlement Agreement. The allowed EPA claims will receive from the Armstrong estate only the fractional percentage distribution that other general insured claims receive. (Settlement Agreement ¶ 12.) The Agreement defines six sites, specifically including the Peterson/Puritan Site, as "Insurance Sites." (Settlement Agreement ¶ 1.O.) The total agreed claims for these six Insurance Sites is $8,603,169.18, which is more than 98% of the overall settlement amount. For these Insurance Sites, the Agreement contemplates that the EPA may have a right to bring "a direct action against any of Armstrong World Industries, Inc.'s insurers..." for the portion of the claim amount (the bulk thereof) not paid by the Armstrong estate (Settlement Agreement ¶ 5.C), doubtless on the likely-to-be-asserted theory that once the EPA receives an allowed claim from this Court (as it would for each of the six sites), the EPA can assert it has a federal judgment entitling it to garnish policies under state law.

7. The EPA can elect to waive direct action rights and share in any proceeds Armstrong recovers from the insurer -- the proceeds, if any, to be shared 52% for Armstrong, 48% for EPA. (Settlement Agreement ¶ 5.D.) In that event, Armstrong can "allocate in writing all insurance proceeds on a fair and equitable basis among the various Insurance Sites and other sites...." (Settlement Agreement ¶ 5.D). In other words, Armstrong will not be bound by the claim amount allocation that it seeks to impose on Liberty Mutual; it can reallocate insurance proceeds among all sites, insured or not insured, for its own benefit.

8. The existence and extent of insurance coverage is disputed. Regardless of such dispute, any entity seeking payment from Liberty Mutual based on a settlement (to which Liberty Mutual has not consented) must show not only that the claim is covered, but also (among other things) that the settlement amount is reasonable and non-collusive. *See In re Prudential Lines*, 170 B.R. 222, 246-47 (S.D.N.Y. 1994), appeal dismissed, 59 F.3d 327 (2d Cir. 1995); *Nationwide Mutual Insurance Co. v. Lehman*, 743 A. 2d 933, 942 (Pa. Super. Ct. 1999). By transforming the Settlement here to an agreed allowed claim, Armstrong and EPA seek to relieve themselves of that burden.

**NO REASONED BASIS FOR THE AGREED CLAIM AMOUNT**

9. As set forth in the Reid Declaration, Liberty Mutual has made diligent effort to obtain information from Armstrong. (Reid Decl. ¶ 4.) But information necessary to reach a reasoned conclusion regarding whether Armstrong has any liability for the Peterson/Puritan Site and for the collection of sites encompassed in the Settlement, and, if so, the magnitude or range of such liability, has not been provided.

(Id. at ¶¶ 3-15.) No evidence of this kind was attached to, or provided with, the Joint Motion. As best Liberty Mutual can ascertain, it does not yet exist. (Reid Decl. ¶¶ 4-15.)

10. As recently as April 25, 2005, Ms. Reid verified with the EPA that critical and necessary documents, the Remedial Investigation Report and Feasibility Study, do not exist. (Reid Decl. ¶¶ 7,8.) These documents would show the EPA's assessment of the Peterson/Puritan Site and the remedy selected and projected cost thereof. Id.

11. It is not possible to determine if Armstrong has any liability relating to the Peterson/Puritan Site, and if liability is subsequently established, to calculate Armstrong's allocated share of the projected remedy cost for the Peterson/Puritan Site based on the information currently available. (Reid Decl. ¶ 9.) On April 25, 2005, EPA confirmed to Liberty Mutual that it had not yet allocated shares of liability among nearly 80 identified potentially responsible parties ("PRPs") at that Site. (Reid Decl. ¶ 11.) Liability share allocation is critical, since not only is Armstrong only one of 80 PRPs, and Armstrong sent waste to that Site for only 3 out 32 years in which it accepted waste. (Reid. Decl. ¶¶ 6, 10, 15.)

12. Given the unfounded nature of the EPA's assessment of the Peterson/Puritan Site, the high number of PRP's (80), and the relatively small number of years that Armstrong sent waste to this Site (3 out of 32), an assessment of $7,780,000 is baseless and wholly speculative. (Reid Decl. ¶ 15.) Indeed, in the absence of a Remedial Investigation Report, Feasibility Study, and share allocation among PRPs, any determination or assessment of liability is guesswork. (Reid Decl. ¶ 9.)

13. The Joint Motion, of course, downplays the stipulated allocation to the Peterson/Puritan Site, noting perfunctorily in a footnote that "EPA's claim with respect to the Peterson/Puritan site is the only claim by the EPA against AWI in excess of $300,000." (Joint Motion at 4 n.4.) Instead, the focus of the Joint Motion is the "global" nature of the settlement. (Joint Motion ¶¶ 7, 8, 18, 19, 21.) It touts "a full settlement of AWI's liability at over 37 sites for an allowed prepetition claim of approximately $8 million." (Joint Motion ¶ 19.) But the $8 million number also is without support.

14. The Motion pays lip service to the required settlement factors (probability of success, difficulty in collection, complexity and expense, creditor interests) (Joint Motion ¶ 17), but it does not analyze or present specific facts. Predictably, the Joint Motion urges minimal judicial scrutiny, stressing Second Circuit authority that a settlement be approved unless it "fall[s] below the lowest point in the range of reasonableness." (Joint Motion ¶ 16, citations omitted.) However, as shown, the Joint Motion does not meet the standards for settlement approval encompassed in Bankruptcy Rule 9019(a) and long established case precedent.

## WHAT TO DO

15. The matter should be set for full evidentiary hearing in this Court. Prior to such hearing, Liberty Mutual "is entitled to discovery sufficient to explore...whether the settlements are reasonable...." *In Re Prudential Lines, Inc.*, 170 B.R. at 246. That discovery will include both documents and depositions of the pertinent Armstrong and EPA witnesses.

16. Shortly, Liberty Mutual will serve formal document requests seeking among other things (1) the "extensive analyses and presentations by environmental and legal professionals on both sides" referenced at ¶ 19 of the Joint Motion; (2) all documents relating to "AWI's alleged equitable allocation at each of the Liquidated Sites," referenced at ¶ 19 of the Joint Motion; (3) all documents relating to "total past and estimated future costs of clean up at the site," referenced at ¶ 19 of the Joint Motion; (4) all documents relating to the "arguments that AWI's waste was less toxic then the waste of the other PRPs," referenced at ¶ 19 of the Joint Motion; (5) all documents relating to "AWI's allocations and the expected cost of remediation at each of the Liquidated Sites," referenced at ¶ 19 of the Joint Motion; (6) all Armstrong-generated documents indicating its knowledge as to the hazardous nature of the waste it sent to the Peterson/Puritan Site; (7) all documents relating to negotiations between Armstrong and the EPA relating to the Settlement Agreement.

17. In addition to all of the above points, Liberty Mutual further states that if any settlement based on a thorough analysis of Armstrong's liability and appropriate allocation of the projected remedy cost is subsequently approved -- and the present Settlement Agreement should not be approved -- the Court should make clear in its order that nothing therein (i) be deemed to sanction or create a direct cause of action by EPA against Liberty Mutual that would not otherwise exist under state law; or (ii) in any way affect or impair Armstrong's obligation to Liberty Mutual to pay retrospective policy premiums.

## CONCLUSIONS

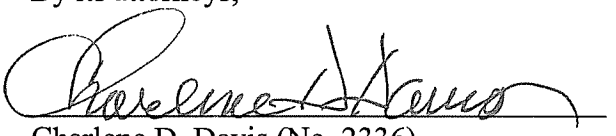
For the reasons stated, Liberty Mutual requests that the Court deny the Joint Motion and grant such other and further relief that may be just and proper.

Dated: April 29, 2005

Respectfully submitted,

LIBERTY MUTUAL INSURANCE COMPANY

By its attorneys,



Charlene D. Davis (No. 2336)
Ashely B. Stitzer (No. 3891)
The Bayard Firm
222 Delaware Avenue, Suite 900
P.O. Box 25130
Wilmington, DE 19899
(302) 655-5000

and

Robert B. Millner (IL Bar No. 01922645)
Sonnenschein Nath & Rosenthal LLP
8000 Sears Tower
Chicago, IL 60606
(312) 876-8000

and

Stanley J. Samorajczyk
Akin Gump Strauss Hauer Feld LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 887-4000

# EXHIBIT "A"

**UNITED STATES BANKRUPTCY COURT**
**DISTRICT OF DELAWARE**

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| *In re* | : | Chapter 11 Case No. |
| | : | |
| ARMSTRONG WORLD INDUSTRIES, INC., *et al.*, | : | 00-4471 (JKF) |
| | : | |
| | : | (Jointly Administered) |
| Debtors. | : | |
| | : | |
| | : | |

## DECLARATION OF NANCY L. REID

I, Nancy L. Reid, do hereby depose and state:

1. I am an environmental consultant employed by Liberty Mutual Insurance Company ("Liberty Mutual"), within its Complex and Emerging Risks Claims Department. I have worked at Liberty Mutual for 5-and-a-half years. I assist in the handling of environmental claims by analyzing technical documents concerning pollution clean up plans, and evaluating the methodology of the clean up and the reasonableness of the associated costs.

2. I am a licensed professional geologist in New Hampshire, and maintain all the educational requirements of that designation. I received my bachelor of science degree in geology in 1984 from the University of New Hampshire. My past employment history includes the environmental engineering firms of Haley & Aldrich, Inc. from 1987 through 1999 and Heynen Engineers from 1985 through 1987. In the course of my professional work, I have reviewed numerous documents relating to remedial investigations, feasibility studies and pollution clean up remedies. I have personal knowledge of the matters stated herein.

3. I recently reviewed the proposed settlement agreement between Armstrong World Industries ("Armstrong") and the Environmental Protection Agency ("EPA") concerning, among other sites, the Peterson/Puritan Site ("Site") in Rhode Island. Armstrong and EPA have agreed on an overall allowed claim of $8,727,738.80 covering at least 37 sites and that Armstrong's liability at the Peterson/Puritan Site is $7,780,000. For reasons I will set out below, there is no reasoned basis for the overall $8,727,738.80 or the $7,780,000 for the Peterson/Puritan Site. These figures are the product of speculation and guesswork.

4. In the summer of 2004, I traveled to Armstrong's headquarters in Lancaster, PA to review its files on a number of hazardous waste sites for which Armstrong is seeking insurance coverage from Liberty Mutual. Among the files I reviewed was Armstrong's file on the Site. Specifically, Armstrong provided me with a copy of the EPA's Peterson/Puritan Superfund Site Preliminary Reuse Assessment (dated March 2002); EPA's Five Year Review Report (September 2002); EPA's Notice of Potential Liability and Request for Supplemental Information to Armstrong and Armstrong's response (August 6, 2001); a Power Point Presentation re "JM Mills Landfill, Summarizing Past and Projected Costs for PRP Group" (undated); and the Proof of Claim on Behalf of EPA to U.S. Bankruptcy Court (September 29, 2003). During this review, however, I was not provided material documents regarding Armstrong's actual liability at the Site necessary to reach a reasoned conclusion as to the amount of Armstrong's liability or even the magnitude or range thereof.

5. In addition to reviewing the documents concerning the Site that Armstrong provided, I reviewed the publicly available information about the Site on the National Priority List web page maintained by the EPA. The information I reviewed included the Peterson/Puritan NPL Site Fact Sheet, the Peterson/Puritan NPL Site Narrative, several press releases issued in 2002; a fact sheet entitled "EPA Begins Field Investigation August 2003" and the fact sheet entitled "Behind the Scenes." The EPA Web site indicated that the Remedial Investigation ("RI") and Feasibility Study ("FS"), both critical reports as noted below, were not available. The web stated that the RI was only in process, and an FS cannot be prepared without an RI.

6. From these sources, I was able to determine that Armstrong is a potentially responsible party ("PRP") only at the second operable unit for the Site ("OU-2"). There are two major sources for contamination within OU-2: (1) the JM Mills Landfill and Transfer Station and (2) the Island Landfill. Based on my review, Armstrong disposed of waste only at the JM Mills Landfill/Transfer Station, and only from 1978 to 1981. The JM Mills Landfill accepted waste from 1954 through 1986.

7. On April 25, 2005, I spoke to David Newton, who is EPA's remedial project manager for the Site. Mr. Newton confirmed that the RI, which was slated to be available to the public in early 2005, would not be ready for public review until late summer 2005. The RI would document the EPA's environmental assessment of the Site, would characterize the Site conditions, and evaluate the impact of the identified contaminants on the natural resources at or near the Site. The RI is a critical and necessary document that must be considered as a basic step in reaching a reasoned, reliable conclusion as to Armstrong's liability or even its magnitude or range.

8. Moreover, Mr. Newton stated that another document, the FS for the Site, would not be ready until fall 2006. The FS evaluates remedial alternatives for addressing the contamination, and projects the costs for each alternative. The EPA uses the FS, and the public comments it receives on the FS, to select a remedy for a Superfund site. The FS is another critical document in reaching a reasoned, reliable conclusion as to Armstrong's liability and the magnitude or range thereof, if any.

9. It is only after EPA has selected a remedy for the Site, and after EPA has calculated each PRP's share, that EPA can assess or determine what an individual PRP's ultimate projected liability will be. It is not possible to calculate the allocated share for any PRP's projected liability at the Site based on the information currently available. In the absence of an RI or an FS and any share allocation among PRP's, any determination or assessment of liability is guesswork.

10. Mr. Newton informed me on April 25, 2005 that the EPA has identified nearly 80 PRP's for the Site, of whom Armstrong is only one. In 1998, EPA had initially identified only Unilever Best Foods and CCL as PRP's at the Site. Unilever and CCL have paid some of the Site assessment costs to date. Further investigation to identify PRP's was undertaken, and Armstrong was among the group of additional PRP's identified in December 2001.

11. Mr. Newton stated on April 25, 2005 that the EPA has not yet allocated shares of liability among the nearly 80 identified PRP's, not even preliminarily. He indicated that the EPA wants to complete the RI process first, in order to evaluate the percentage fault of each PRP.

12. Mr. Newton also stated on April 25, 2005 that the cost of assessing the Site to date is approximately $3,000,000 to $5,000,000 for preliminary work by environmental professionals and approximately $1 million for the investigation to identify additional PRP's. This information contrasts significantly with the summary information that Armstrong provided to me in the summer of 2004. This leads me to conclude that Armstrong has not provided Liberty all the known documentation on costs incurred to date.

13. I have not been provided with any documentation of the negotiations between Armstrong and the EPA concerning the Site, including the "extensive analyses and presentations by environmental and legal professionals on both sides" apparently available to Armstrong and EPA as referenced at Paragraph 19 of the Joint Motion for Order (I) Approving Settlement Agreement between Armstrong World Industries, Inc. and the United States Environmental Protection Agency and (II) Approving the Assumption of the Malvern Consent Decree Agreements ("Joint Motion").

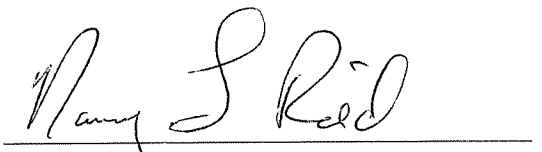
14. Nor have I been provided with any Armstrong-generated documents indicating its knowledge about the hazardous nature, if any, of the waste it sent to the Site. No documents previously provided by Armstrong show, or give any basis for, the "equitable allocation" at the Site or the "total past and estimated future costs of clean up at the sites," also referenced in Paragraph 19 of the Joint Motion.

15. Given the unfounded nature of the EPA's assessment of the Site, the high number of PRP's (80) and the relatively small number of years that Armstrong sent waste to this Site (3 out of 32), an assessment of $7,780,000 is baseless. Moreover, without knowing what share of the liability Armstrong will be allocated or the ultimate cost of this remedial action, this settlement figure is wholly speculative.

I certify under penalty of perjury that the foregoing is true.

Executed on April 28, 2005

At Dover, New Hampshire



Nancy L. Reid